

1 Albert N. Kennedy, OSB No. 821429 (Lead Attorney)

Direct Dial: 503.802.2013

2 Facsimile: 503.972.3713

E-Mail: albert.kennedy@tonkon.com

3 Timothy J. Conway, OSB No. 851752

Direct Dial: (503) 802-2027

4 Facsimile: (503) 972-3727

E-Mail: tim.conway@tonkon.com

5 Michael W. Fletcher, OSB No. 010448

Direct Dial: (503) 802-2169

6 Facsimile: (503) 972-3867

E-Mail: michael.fletcher@tonkon.com

7 Ava L. Schoen, OSB No. 044072

Direct Dial: (503) 802-2143

8 Facsimile: (503) 972-3843

E-Mail: ava.schoen@tonkon.com

9 TONKON TORP LLP

888 SW Fifth Avenue, Suite 1600

10 Portland, OR 97204-2099

11 Attorneys for Debtors

12
13 UNITED STATES BANKRUPTCY COURT

14 DISTRICT OF OREGON

15 In re

16 NORPAC Foods, Inc. [TIN 9330],
17 Hermiston Foods, LLC [TIN 7444], and
18 Quincy Foods, LLC [TIN 3927],

19 Debtors.

Case No. 19-62584-pcm11

LEAD CASE

(Jointly Administered with Case
Nos. 19-33102-pcm11 and
19-33103-pcm11)

**DEBTORS' MOTION TO REJECT
COLLECTIVE BARGAINING
AGREEMENTS**

21 NORPAC Foods, Inc., Hermiston Foods, LLC, and Quincy Foods, LLC, debtors

22 and debtors-in-possession ("Debtors"), hereby move this Court for an order pursuant to

23 11 U.S.C. § 1113 approving Debtors' rejection of the Collective Bargaining Agreements set forth

24 on **Exhibit 1** attached hereto. In support of this Motion, Debtors state as follows:

BACKGROUND

1
2 1. On August 22, 2019 (the “Petition Date”), Debtors filed voluntary
3 petitions for relief under Chapter 11 of Title 11 of the United States Code.

4 2. On August 26, 2019, the Court entered an Order Directing Joint
5 Administration Pursuant to FRBP 1015(b) of each of Debtors’ cases.

6 3. Debtors have continued in possession of their property and are continuing
7 to operate and manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and
8 1108 of Title 11 of the United States Code.

9 4. No request has been made for the appointment of a trustee or examiner.
10 An official committee of unsecured creditors was appointed in Debtors’ cases on August 30,
11 2019 (the “Committee”).

12 5. The relief requested herein by Debtors is based on the Court’s authority
13 pursuant to 11 U.S.C. § 105(a) and 11 U.S.C. § 1113.

14 6. At the peak of the processing season, Debtors employ up to 3,159
15 employees, of whom approximately 2,750 belong to four separate bargaining units, each covered
16 by a separate labor agreement. Three of the bargaining units are represented by Teamsters
17 Locals 324, 670, and 760 respectively (collectively, the “Teamsters”). The other bargaining unit
18 is represented by the International Union of Operating Engineers Local 701 (the “IUOE”) (the
19 Teamsters and IUOE are collectively referred to as the “Unions”).

20 7. Teamsters Local 324 and NORPAC Foods, Inc. negotiated and ratified a
21 collective bargaining agreement for the period from March 2, 2017 through March 1, 2020.
22 Teamsters Local 324 and NORPAC Foods, Inc. have further negotiated and executed various
23 letters of understanding, still in effect.

24 8. Teamsters Local 670 and NORPAC Foods, Inc. (Plants 1, 5, 6, 7, and 8)
25 negotiated and ratified a collective bargaining agreement for the period from April 1, 2017
26

1 through March 31, 2020. Teamsters Local 670 and NORPAC Foods, Inc. have further
2 negotiated and executed various letters of understanding, still in effect.

3 9. Teamsters Local 760 and Quincy Foods, LLC. negotiated and ratified a
4 collective bargaining agreement for the period from January 1, 2018 through December 31,
5 2020. Teamsters Local 760 and Quincy Foods, LLC have further negotiated and executed
6 various letters of understanding, still in effect.

7 10. IUOE and NORPAC Foods, Inc. negotiated and ratified a collective
8 bargaining agreement for the period from July 1, 2018 through June 30, 2021. IUOE and
9 NORPAC Foods, Inc. have further negotiated and executed various letters of understanding, still
10 in effect.

11 11. All collective bargaining agreements, extension agreements, and letters of
12 understanding described in paragraphs 7 through 10 above and set forth on **Exhibit 1** are referred
13 to collectively as the “Labor Agreements.”

14 12. Debtors have determined that they are unable to continue operating their
15 business. Consequently, Debtors are attempting to sell their assets to one or more potential
16 purchasers. On September 3, 2019 Debtors filed Debtors’ Amended Motion for Order
17 Approving (A) Bid and Sale Procedures, Including Expense Reimbursement Fee, to Oregon
18 Potato Company; and (B) Sale of Real Property Free and Clear of Liens, Claims, and
19 Encumbrances; and (C) Assumption and Assignment of Executory Contracts [ECF No. 83]
20 (“Sale Motion”). On September 25, 2019, the Court entered an Order (A) Approving Bid
21 Procedures, (B) Scheduling an Auction and Hearing to Consider the Sale of Debtors’ Assets, and
22 (C) Establishing Objection Deadlines [ECF No. 203] (“Bid Procedures”) which, among other
23 things, established Oregon Potato Company (“OPC”) as a stalking horse bidder for the assets
24 pursuant to the terms of an Asset Purchase Agreement (“APA”). Pursuant to Section 2.02 of the
25 APA, OPC “shall not assume any Liabilities associated with, relating to, or resulting from, any
26

1 single or multi-employer pension plan of any Seller.” As such, OPC has repeatedly informed
2 Debtors that it will not accept an assignment of any of the Labor Agreements.

3 13. On October 24, 2019, Debtors will hold an auction to sell substantially all
4 of their assets. No other bidders have come forward at this time. The winning bidder of the
5 auction will be acquiring locations that currently have unionized workforces with the above-
6 described Labor Agreements. At this time, no bidder has come forward with a bid that would
7 provide for the assumption and assignment of the Labor Agreements.

8 14. On September 30, 2019, Debtors sent a letter with a written proposal to
9 the Unions to modify the Labor Agreements, pursuant to 11 U.S.C. § 1113 (the “Proposal”),
10 attached hereto as **Exhibit 2**. In addition, Debtors offered the Unions relevant documentation
11 and information to evaluate the Proposal. Debtors offered to meet at reasonable times with the
12 Unions to confer in good faith to reach a mutually satisfactory modification of the Labor
13 Agreements, if possible, and specifically offered to meet on October 1 or October 2, 2019. See
14 **Exhibit 2**. As of the date of this filing, the Teamsters have requested documents, which have
15 been provided by Debtors. The Unions could not meet at the offered time, but have indicated a
16 willingness to meet and bargain at a time and place to be mutually agreed upon by the parties.
17 As of the date of this filing, the Unions have not accepted Debtors’ offer to meet and bargain.

18 15. Notwithstanding OPC’s unequivocal statement that it will not assume any
19 of the Labor Agreements, it is Debtors’ understanding that OPC is in negotiations with the
20 Unions and that substantial progress is being made in those negotiations with respect to entering
21 into new labor agreements between the Unions and OPC on mutually beneficial terms.
22 Notwithstanding those negotiations, which Debtors hope are successful, Debtors’ Labor
23 Agreements are not being assumed and require rejection upon closing of the sale since Debtor
24 will no longer have any employees.

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17. Section 1113(b) provides:

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of Debtor and assures that all creditors, Debtor and all of the affected parties are treated fairly and equitably; and

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

Page 5 of 9 - DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS

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- (a) Debtor make a proposal to modify the CBA;
- (b) The proposal be based on the most complete and reliable information available at the time of the proposal;
- (c) The proposed modifications are necessary to permit reorganization of Debtor;
- (d) The modifications assure that all creditors, Debtor, and all other affected parties, are treated fairly and equitably;
- (e) Debtor provides to the union such relevant information as is necessary to evaluate the proposal;
- (f) Debtor meets at reasonable times with the union between the time of the proposal; and the time of the hearing on the proposal;
- (g) Debtor negotiates with the union in good faith at these meetings;
- (h) The union refuses to accept Debtors' proposal without good cause;
- (i) The balance of the equities clearly favors rejection of the agreement.

PROCEDURAL REQUIREMENTS

6 of 9 - DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS

1 Good Faith. On September 30, 2019, Debtors provided the Unions with a written proposal as
2 required by Section 1113(b)(1)(A), to modify the Labor Agreements. Debtors' Proposal
3 requested the Unions to cancel the collective bargaining agreements and allow the prospective
4 buyer to enter into new agreements mutually acceptable between the buyer and the Unions.
5 Potential buyers have indicated that they will likely, but are not required to, hire some or all of
6 the current NORPAC union employees. Those negotiations are ongoing, but the buyer has made
7 it clear that it will not accept an assignment of Debtors' Labor Agreements. The rejection of the
8 Labor Agreements will thereby allow the sale of Debtors' assets and continuation of the business
9 operations by the buyer as a going concern, rather than the more dire alternative of Debtors
10 closing down the business, terminating all the employees, and liquidating the assets on a
11 piecemeal basis. (See **Exhibit 1.**) The Proposal is based on the most complete and reliable
12 information available to Debtors. In order to allow the Unions to evaluate the Proposal, Debtors
13 offered and have provided the Unions with documents containing relevant information for the
14 Unions to evaluate the Proposal. At all times, Debtors have offered to meet with and have
15 conferred with the Unions in good faith and candidly discussed Debtors' financial situation and
16 the necessity of a sale or liquidation of their assets.

17 20. Modification is Necessary. To determine if the proposed changes are
18 "necessary to permit the reorganization of Debtor," the bankruptcy court must consider whether
19 such changes will "increase the likelihood of successful reorganization." *Truck Drivers Local*
20 *807 v. Carey Transp., Inc.*, 816 F.2d 82, 89 (2nd Cir. 1987); accord *In re Mile Hi Metal Systems,*
21 *Inc.*, 899 F.2d 887, 893 (10th Cir. 1990); *Big Sky*, 104 B.R. at 335. Under this standard, the
22 court will find the changes necessary if the proposal is made in good faith and contains
23 "necessary, but not absolutely minimal, changes that will enable Debtor to complete the
24 reorganization successfully." *Carey*, 816 F.2d at 30. In *In re Karykeion, Inc.*, a case with similar
25 facts to ours, the bankruptcy court held that rejecting the Labor Agreements was necessary to
26 permit debtor's reorganization, where debtor was required to sell its assets and the purchaser

1 made the sale contingent on debtor’s receipt of an order from the bankruptcy court approving the
2 rejection of all of its collective bargaining agreements prior to the closing date. 435 B.R. at 678.
3 There, like our case, the court noted that debtor had the options of either shutting down
4 immediately or selling its assets to a buyer who refused to assume the CBAs. *Id.* The court held
5 that the asset sale was necessary for a successful reorganization, and that it was necessary to
6 reject the CBAs in order to actualize the asset sale (otherwise, the deal would collapse). *Id.*
7 Here, Debtors submit that the rejection of the Labor Agreements is necessary to achieve a
8 successful reorganization, which entails the sale of its assets. At this time, no prospective buyer
9 making a bid pursuant to the Bid Procedures has agreed to assume any of the Labor Agreements
10 so Debtor must reject the Labor Agreements.

11 21. Fair and Equitable Treatment. With respect to this factor, Debtors submit
12 that the Proposal treats all creditors, Debtors, and the employees fairly and equitably. Again, the
13 *Karykeion* case is illuminating. The court commended the workers for “put[ting] their heart and
14 soul into saving this hospital for the past 18 months.” 435 B.R. at 680. However, the court
15 noted that the asset sale will ensure that some of the employees will continue employment;
16 meanwhile, the creditors are receiving nothing or far less than the debt owed. *Id.* Ultimately, the
17 court held that “there is sufficient shared pain to find that the [rejection of the CBAs] treats all
18 parties fairly and equitably.” *Id.* Similarly, here, the rejection of the Labor Agreements will help
19 to ensure that most employees will continue their employment. Meanwhile, the creditors will
20 receive payment—if only partial—of the debt they are owed.

21 22. Refusal to Accept the Proposal. With respect to this factor, courts have
22 held that it is not necessary to find that a representative has rejected a proposal in bad faith or
23 with similar motive. *In re Salt Creek Freightways*, 47 B.R. 835, 840-41 (Bankr. D. Wy. 1985).
24 If the court finds that the company negotiated in good faith and the requested changes are
25 necessary, the representative’s refusal to accept the changes will not constitute “good cause.” *In*
26 *re Allied Delivery System Co.*, 49 B.R. 700, 704 (Bankr. N.D. Ohio 1985). Because the Unions

1 have not identified a buyer under the Sale Motion who has made an offer in accordance with the
2 Bid Procedures to assume the Labor Agreements, and because Debtors have negotiated in good
3 faith, Debtors submit that the Unions have rejected the Proposal without good cause and that this
4 factor is satisfied.

5 23. Balance of the Equities Clearly Favors Rejection. Debtors submit that the
6 balance of the equities clearly favors rejection of the Labor Agreements. The stalking horse
7 bidder has stated that it will not assume the Labor Agreements. At this time, no other buyer has
8 made an offer under the Bid Procedures and no other prospective buyer has informed Debtors
9 that they intend to make an offer that would include assumption and assignment of the Labor
10 Agreements. Debtors are ceasing their operations. There is no basis to assume the Labor
11 Agreements. Rejecting the Labor Agreements will facilitate the sale of Debtors' assets to the
12 winning bidder. Completing the sales to the eventual winning bidder will increase the likelihood
13 of a return to both secured and unsecured creditors, and will increase the likelihood that most
14 employees retain their jobs. Accordingly, the balance of the equities favors rejection of the
15 Labor Agreements. *See Karykeion*, 435 B.R. at 684.

16 WHEREFORE, Debtors respectfully request that the Court enter an order,
17 substantially in the form attached hereto as **Exhibit 3**, approving Debtors' rejection of the Labor
18 Agreements.

19 DATED this 14th day of October, 2019.

20 TONKON TORP LLP

21
22 By /s/ Timothy J. Conway

23 Albert N. Kennedy, OSB NO. 821429

24 Timothy J. Conway, OSB No. 851752

25 Michael W. Fletcher, OSB No. 010448

26 Ava L. Schoen, OSB No. 044072

Attorneys for Debtors

EXHIBIT 1

Labor Agreements

EXHIBIT 1
LIST OF UNION-RELATED LABOR AGREEMENTS

<u>Name / Address</u>	<u>Description of Contract</u>
Teamsters Local 324 ATTN: Chris Muhs 2686 Portland Rd. NE Salem, Oregon 97301	Collective Bargaining Union Agreement between NORPAC Foods, Inc. and Teamsters Local 324 for period from March 2, 2017 through March 1, 2020, and including any extension agreements and letters of understanding executed between the parties related thereto.
Teamsters Local 670 ATTN: Michael Beranbaum 750 Browning Ave. SE Salem, OR 97302	Collective Bargaining Union Agreement between NORPAC Foods, Inc. (Plants 1, 5, 6, 7 &8) and Teamsters Local 670 for period from April 1, 2017 through March 31, 2020, and including any extension agreements and letters of understanding executed between the parties related thereto.
Teamsters Local 760 ATTN: Leonard Crouch 1211 West Lincoln Yakima, WA 98902	Collective Bargaining Union Agreement between Quincy Food, LLC and Teamsters Local 760 for period from January 1, 2018 through December 31, 2020, and including any extension agreements and letters of understanding executed between the parties related thereto.
International Union of Operating Engineers Local 701 ATTN: Chris Montgomery 555 1st Street Gladstone, Oregon 97027	Collective Bargaining Union Agreement between NORPAC Foods, Inc. and International Union of Operating Engineers Local 701, for period from July 1, 2018 through June 30, 2021, and including any extension agreements and letters of understanding executed between the parties related thereto.

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EXHIBIT 2

Proposal



NORPAC FOODS INC.

3225 25th St. SE
Salem, OR 97302-1133
PO Box 14444
Salem, OR 97309-5012
503-480-2100

VIA FIRST CLASS MAIL AND EMAILS

- Teamstermuhs324@yahoo.com
- mberanbaum@teamster670.org
- leonary@teamsters760.org
- chris@iuoe701.com

September 30, 2019

Teamsters Local 324
ATTN: Chris Muhs
2686 Portland Rd. NE
Salem, Oregon 97301

Teamsters Local 670
ATTN: Michael Beranbaum
750 Browning Ave SE
Salem, OR 97302

Teamsters Local 760
ATTN: Leonard Crouch
1211 W. Lincoln Ave.
Yakima, WA 98902

International Union of Operating Engineers Local 701
ATTN: Chris Montgomery
555 East 1st Street
Gladstone, Oregon 97027

Re: *In re: NORPAC Foods, Inc., Hermiston Foods, LLC and Quincy Foods, LLC*
USBC OR Case No. 19-62584-pcm11

Dear Teamsters and IUOE:

As you know, NORPAC Foods, Inc., Hermiston Foods, LLC, and Quincy Foods, LLC (collectively “NORPAC”) are currently in a Chapter 11 bankruptcy, and we are in the process of attempting to close the sale of NORPAC by the end of October. We regret to inform you that it now appears unavoidable that the company must cancel the labor agreements in order to attract potential buyers.

Enclosed is NORPAC’s Section 1113(b)(1) Proposal to modify the labor agreements between the company and the unions. Also, we are willing to provide you with documents containing relevant information to evaluate the Proposal, as required by 11 U.S.C. 1113(b)(1)(B), and request that you contact Jackie Damm to determine what documents you need and she will arrange for those to be provided.

Ms. Damm is available to meet, at reasonable times, with the authorized bargaining representatives to confer in good faith to reach a mutually satisfactory modification of the labor agreements. Ms. Damm is available to meet at a mutually agreeable location on the following dates: October 1 (after 1:30 pm), and October 2 (before 3:30 pm). Please respond directly to Ms. Damm at your earliest convenience of your availability. If there is additional information that you believe is necessary to evaluate the Proposal, please notify Ms. Damm in writing and she will promptly consider the request.

Sincerely,
NORPAC Foods, Inc.

A handwritten signature in blue ink that reads "Shawn Campbell". The signature is written in a cursive, flowing style.

Shawn Campbell
President & CEO

Enclosures
Cc: Jackie Damm, Ogletree Deakins (Jacqueline.damm@ogletree.com)



NORPAC FOOD'S SECTION 1113
PROPOSAL TO THE TEAMSTERS LOCAL UNION NOS. 324, 670 and 760
AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 701

September 30, 2019

NORPAC Foods, Inc., Hermiston Foods, LLC, and Quincy Foods, LLC (collectively "NORPAC") are Chapter 11 debtors in the United States Bankruptcy Court for the District of Oregon, Case No. 19-62584-pcm11 Lead Case (Jointly Administered with Case Nos. 19-33102-pcm11 and 19-33103-pcm11) (hereinafter "Bankruptcy Cases"). Pursuant to Section 1113 of the Bankruptcy Code, NORPAC makes the following proposal (the "Proposal") to cancel the existing labor agreements, as identified in Exhibit A attached hereto, between NORPAC and the Teamsters, Locals 324, 670 and 760 and International Union of Operating Engineers Local 701 (collectively "the Unions"). NORPAC has determined that it is unable to continue operating its business. Consequently, NORPAC is attempting to sell its assets to one or more potential purchasers. If the assets are not sold to one or more of such potential purchasers, NORPAC's assets will be liquidated. On September 25, 2019 the court in the Bankruptcy Cases entered an Order (A) Approving Bid Procedures, (B) Scheduling An Auction And Hearing To Consider Sale of Debtor's Assets, and (C) Establishing Objection Deadlines, which among others items, established a stalking horse bidder for the assets. The stalking horse bidder has stated that they will not assume any obligations under any agreements identified in Exhibit A. Under NORPAC's current financial circumstances, this Proposal is necessary for NORPAC to consummate a sale, which will maximize the return to creditors. This Proposal is based on the most complete and reliable information available to date, and is fair and equitable to the parties affected by these proposed changes.

1. Potential buyers have indicated that they will likely, but are not required to, hire some or all of NORPAC's current employees, subject to the terms and conditions as established by the potential buyer.
2. The Unions will expressly agree that the purchaser will not assume any obligations or liability under any retirement plan available to NORPAC's union employees.
3. The Unions will expressly agree that the purchaser will not assume any obligations or liability under any agreements identified in Exhibit A.
4. The Unions will expressly agree that the purchaser will not recognize the Unions as the representative agents of the new hires unless and until there is an objective demonstration by the employees of majority support for the Unions.
5. The agreements identified in Exhibit A will be terminated because NORPAC will cease business operations because its operating assets will be sold. The termination of the agreements in Exhibit A will be effective on October 31, 2019 or the closing date when NORPAC sells all or substantially all of its assets to a purchaser(s), whichever is later.

EXHIBIT A
LIST OF UNION-RELATED LABOR AGREEMENTS
SUBJECT TO 11 U.S.C. §1113 PROPSAL

<u>Name / Address</u>	<u>Description of Contract</u>
Teamsters Local 324 ATTN: Chris Muhs 2686 Portland Rd. NE Salem, Oregon 97301	Collective Bargaining Union Agreement between NORPAC Foods, Inc. and Teamsters Local 324 for period from March 2, 2017 through March 1, 2020, and including any letters of understanding executed between the parties relating thereto
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Teamsters Local 760 ATTN: Leonard Crouch 1211 West Lincoln Yakima, WA 98902	Collective Bargaining Union Agreement between Quincy Food, LLC and Teamsters Local 760 for period from January 1, 2018 through December 31, 2020, and including any letters of understanding executed between the parties relating thereto
International Union of Operating Engineers Local 701 ATTN: Chris Montgomery 555 East 1 st Street Gladstone, Oregon 97027	Collective Bargaining Union Agreement between NORPAC Foods, Inc. and International Union of Operating Engineers Local 701, for period from July 1, 2018 through June 30, 2021, and including any letters of understanding executed between the parties relating thereto

EXHIBIT 3

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

NORPAC Foods, Inc. [TIN 9330],
Hermiston Foods, LLC [TIN 3927], and
Quincy Foods, LLC [TIN 7444],

Debtors.

Case No. 19-62584-pcm11
LEAD CASE

(Jointly Administered with Case
Nos. 19-33102-pcm11 and
19-33103-pcm11

**ORDER GRANTING DEBTORS'
MOTION TO REJECT COLLECTIVE
BARGAINING AGREEMENTS**

THIS MATTER having come before the Court upon Debtors' Motion to Reject Labor Agreements (the "Motion") [ECF No. ____], a hearing having been held before the Court, and the Court being duly advised in the premises and finding good cause; now, therefore;

IT IS HEREBY ORDERED that Debtors' Motion to Reject Collective Bargaining Agreements attached hereto as **Exhibit 1** is granted effective upon the closing date of the sale of Debtors' assets in accordance with Debtors' Amended Motion for Order Approving (A) Bid and Sale Procedures, Including Expense Reimbursement Fee, to Oregon Potato Company; and

(B) Sale of Real Property Free and Clear of Liens, Claims, and Encumbrances; and (C) Assumption and Assignment of Executory Contracts [ECF No. 83] and Order thereon.

#

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By _____
Albert N. Kennedy, OSB NO. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-mail: al.kennedy@tonkon.com
tim.conway@tonkon.com
michael.fletcher@tonkon.com
ava.schoen@tonkon.com
Attorneys for Debtors

EXHIBIT 1

Labor Agreements

EXHIBIT 1
LIST OF UNION-RELATED LABOR AGREEMENTS

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